

MDEM/26350/10



**In the High Court of Justice
Queen's Bench Division
Administrative Court**

CO Ref: CO/8745/2012

In the matter of an application for Judicial Review

The Queen on the application of

LYMINGTON RIVER ASSOCIATION

versus

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT**WIGHTLINK LTD (Interested Party)**

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgements of service filed by the Defendant and / or Interested Party

Order by the Honourable Mr Justice Males**Permission is hereby refused.****Reasons:**

1. The statutory remedy under section 288 of the Town & Country Planning Act 1990 would have enabled the claimant to challenge the inspector's decision as to the grant of planning permission, including by taking the points now sought to be made. It is not arguable that the mandatory six week time limit for an application under section is unlawful as a matter of EU law or that it can be circumvented by presenting a claim as being for a failure to remedy a breach of EU law. Any duty to remedy remains object to applicable national procedure including time limits.
2. In any event, it is not arguable that there is a breach of EU law requiring to be remedied by virtue of considering the Boiler Marsh works as an integral part of the project. This was a matter of judgment for the inspector and there is no valid basis on which the decision could be regarded as an error of law.
3. Similarly the decision to exclude the C class ferries from consideration cannot be regarded as an error of law, not least because they had already been scrapped by the time of the inspector's decision.
4. As the claim depends upon one or both of the decisions referred to in paragraphs 2 and 3 above being held to be unlawful, it is bound to fail.
5. In view of my decision to refuse permission the question of a protective costs order does not arise. I note that the defendant does not seek an order for costs at this stage.

Signed *Stephen Males* 13.5.13

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date):

Solicitors:

Ref No.

14 MAY 2013**Notes for the Claimant**

If you request the decision to be reconsidered at a hearing in open court, you must complete and serve the enclosed FORM within 7 days of the service of this order – CPR 54.12

Form JRJ 1 – Judicial Review Permission Refused